

Senate Bill 249
February 12, 2013
Presented by Rebecca Jakes Dockter
Senate Fish and Game Committee

Mr. Chairman and committee members, I am Rebecca Jakes Dockter, Chief Legal Counsel of the Montana Department of Fish, Wildlife and Parks (FWP). I am here in opposition to Senate Bill 249.

Senate Bill 249 is problematic for three primary reasons. The most problematic is this bill has the potential to affect almost any day-to-day decision made by the Department and would greatly hinder most day to day decisions made by department staff, including wardens, biologists, and managers. In its requirement for the Department to seek both written and verbal advice, information and guidance for any "management decision or any change in management decision," there could be no end to the degree of input the Department would have to seek. The definition of management in Title 87, though it doesn't explicitly apply here, is illustrative of the broad application of the word "management" decision. MCA §87-5-102 provides:

"Management" means the collection and application of biological information for the purposes of conserving populations of wildlife consistent with other uses of land and habitat. The term includes the entire range of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, habitat improvement, control, and education. The term also includes the periodic protection of species or populations as well as regulated taking.

In sum, for almost any decision it makes, the Department would have to seek input from a county or multiple counties and Tribes. In order to respond to these requests, counties would need Commissioners on call 24-7 with the authority to respond quickly to any number of management decisions affecting their county. As a result, SB 249's process will delay or potentially undermine almost any management decision currently made by FWP professionals on a day to day basis and would require process that is currently not in place in the counties. This would be incredibly inefficient and ineffective.

Some management decisions cannot be delayed without substantially affecting the decision itself. For example, wildlife managers may have to make a quick decision on how respond to a mountain lion in town, whether to relocate or euthanize a bear, or even whether to issue a citation for a hunting violation. The Department has policies that guide management decisions such as these, and entrusts our professional staff to make these types of decisions on a regular basis. We have given these management decisions priority and endeavor to react as quickly as possible to mitigate any potential for public safety or property damage. If the Department, pursuant to SB 249, now has to seek the written or verbal advice of the counties each and every time they receive a call on any management issue, it could severely hinder the reaction time, threaten public safety, greatly increase ineffectiveness, and perhaps cause more problems for the private property owner.

In addition, SB 249 sets up the potential for counties to be in the same position as the Department in the scrutiny it receives for often contentions for management decisions. The level of control given to counties by SB 249 may subject counties to unwanted liability and litigation, just as the Department often faces. Even short of litigation, the counties could be right alongside the Department in having to answer to the public for the sometimes very controversial management decisions it is presented with. Is that something that counties really want to take on, given the logistics and their available resources?

Finally, SB 249, to the extent it provides local government with the ability to affect fish and wildlife issues of Title 87, it has the potential to be in violation of MCA §7-1-112(12)). That law prohibits local governments with self-government powers from exercising any power that "applies to or affects Title 87 (fish and wildlife)." SB 249 would require the Department to allow local government the ability to affect fish and wildlife issues.

As the law is written now, the Department is already required to give counties the opportunity for consultation and coordination in policy decisions involving large predators. For those policy decisions, the Department invites counties to be involved in the MEPA and regulation-setting processes through invitation to comment, either verbally or by attending meetings, and has even invited counties to meetings dedicated to giving opportunity to counties for input. For issues that don't have a MEPA or Commission public process, the Department often consults with individual counties and Tribes. The Department considers any input or information the county provides. While this may not be exactly the level of input the sponsor seeks to have the counties involved, it does not inhibit the decision making of the Department, doesn't subject the counties to scrutiny for controversial decisions, and it doesn't violate the law that prohibits counties from exercising powers applying to fish and wildlife issues.

For the foregoing reasons, the Department opposes SB 249 and respectfully requests a "Do Not Pass" on SB 249.